



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10856941

Date: MAR. 5, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a postdoctoral researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. With the appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or

educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The record indicates that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. In denying the petition, the Director determined that the Petitioner had not met any of three prongs set forth in the *Dhanasar* analytical framework. For the reasons discussed below, we conclude that the Petitioner has not sufficiently identified or provided consistent information and evidence regarding his proposed endeavor, and thus has not demonstrated eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

At the time of filing, the Petitioner was working as a postdoctoral researcher and teaching fellow at the [REDACTED] University [REDACTED].⁵ Regarding his claim of eligibility under *Dhanasar*'s first prong, he indicated that he is seeking employment in the fields of geology and environmental science research, and noted that his research "is of utmost importance because it has direct application for [REDACTED] exploration, geotourism [*sic*] and environmental conservation/protection."⁶ He concluded that, given the importance of these fields and their importance to the economy and society, the need for advances in this field of research "is clearly of substantial intrinsic merit."

The Petitioner further stated that his work is of national importance due to the "critical role that advances in the field will play in our country's national economy." He concluded that accelerated research in the fields of geology and environmental sciences is in the nation's interest, noting that the results of his research will have widespread benefits for America's economy and society at large.

The Director issued a request for evidence (RFE) advising the Petitioner of the *Dhanasar* framework. The RFE in part asked the Petitioner to provide "a detailed description of the proposed endeavor and why it is of substantial merit," including supporting documentary evidence that supports his statements and establishes the proposed endeavor's merit. The Director also requested evidence that the proposed endeavor has national importance, including but not limited to a detailed description of the proposed endeavor conveying how it is of national importance, reports from government agencies, industry groups, or NGOs, or officials representing such entities describing the proposed endeavor, and articles in professional or scientific journals demonstrating that "the endeavor's potential prospective impact."

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in Environmental Sciences (Geology) from the University [REDACTED] in July 2017.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

⁶ In part 6 of the Form I-140, under "Basic Information About the Proposed Employment," the Petitioner did not list a job title or provide a description of his proposed work. According to his Form ETA-750B, Statement of Qualifications of Alien, the Petitioner is seeking work as a "Postdoc Research & Teaching Fellow."

In response, the Petitioner submitted a Statement of Intent in which he stated that “my ‘field of endeavor’ over the next several years is to continuing [sic] conducting research in the fields of geology, environmental science, climate research and oceanography.” Further, he indicated that he is “particularly interested in understanding the environmental causes that impact [REDACTED]

[REDACTED] ecosystems, from recent to older periods.” The Petitioner reiterated his professional history, noting that his research has resulted in numerous cited publications, invitations to perform peer review, and initiated contact from researchers inquiring about and thanking him for his research. He also submitted numerous industry letters recommending him for a national interest waiver based on his prior research, and claimed that “many companies and universities have sent **Mails** to [the Petitioner] for potential interview slot and reference requests.”⁷

In denying the petition, the Director concluded that the Petitioner did not provide a detailed description of the proposed undertaking or venture. Specifically, the Director stated:

You claim in your statement of intent that your “research focuses on combining original and innovative technology in micropaleontology, sedimentology, stratigraphy, geochemistry, and basin analysis to answer timely research questions in both pure and applied aspect of Earth sciences, and paleoenvironmental change”; however, we can glean nothing from this vague statement about your proposed endeavor. Where such information is vague, describes the field, or discusses your past work, we cannot meaningfully determine whether your proposed endeavor meets the first prong of the *Dhanasar* framework.

For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated that his proposed endeavor has both substantial merit and national importance under the first prong of the *Dhanasar* analytical framework.

Despite the Director's request for clarification in the RFE, the Petitioner has not provided sufficient information and evidence regarding his specific proposed activities in the United States. On appeal,⁸ the Petitioner maintains that the Director's determination that he failed to provide a detailed description of the proposed endeavor is “legally preposterous.” Specifically, he argues that in addition to his statement of intent, he submitted “HUNDREDS of pages about his career, including numerous Letters of Recommendations.” He reiterates the specialized fields of geology in which he intends to conduct his research, and cites to his previous experience working in [REDACTED], his teaching and postdoctoral research in those fields, and his numerous journal publications. He concludes by noting that his research is of national importance with regard to global warming, climate change, vegetation change, and sea level rising, issue of both national and global importance.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further

⁷ The record contains copies of email correspondence between the Petitioner and various companies and educational institutions discussing the possibility, or unavailability, of employment opportunities. These emails do not sufficiently articulate the proposed positions and most of this correspondence post-dates the filing of the petition.

⁸ We note that the Petitioner's submission on appeal is entitled “Motion to Reopen.” The Petitioner, however, indicated on the Form I-290B, Notice of Appeal or Motion, that it was filing an appeal of the Director's adverse decision dated January 23, 2020. Therefore, we will treat the submission as an appeal despite the title used by the Petitioner.

noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. The documentation submitted in support of the petition relates to the Petitioner’s past research rather than his future plans to conduct geology and environmental sciences research aimed at climate change and global warming. While the Petitioner has identified a wide variety of possible research topics in areas such as geology, environmental sciences, oil and gas, oceanography, micropaleontology, and stratigraphy, the record does not include sufficient information or supporting documentation to corroborate in which of these varying proposed research areas he will work on in the United States, nor has he identified research projects he intends to undertake to mitigate global warming or climate change in this country. The Petitioner has likewise not demonstrated that his prospective work as a teaching fellow stands to have broader implications rising to the level of having national importance, as it is unclear how the effects of his work would extend beyond the students he would instruct during the course of such a fellowship. Without additional information and evidence, the Petitioner has not demonstrated that his prospective work as a geology and environmental sciences researcher or teaching fellow stands to have broader implications rising to the level of having national importance.⁹ He therefore has not shown that this work satisfies the “national importance” requirement of *Dhanasar*’s first prong.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient documentation regarding any projected U.S. economic impact or job creation attributable to his specific work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s activities would reach the level of “substantial positive economic effects,” so as to demonstrate their national importance under the first prong of *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that he has met the requisite first prong of the *Dhanasar* analytical framework, and therefore he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed

⁹ Although the possible activities he listed likely have substantial merit, the Petitioner has not sufficiently identified his proposed endeavor and therefore does not meet the first prong of the *Dhanasar* framework.